STATE OF MICHIGAN

COURT OF APPEALS

PAULETTE R. DYKSTRA and BRAD DYKSTRA,

Plaintiffs-Appellees/Cross-Appellants,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant/Cross Appellee.

UNPUBLISHED
August 12, 1997

No. 192187
Court of Claims
LC No. 94-015425-CM

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant Michigan Department of Transportation appeals as of right from a judgment for plaintiffs, which was based on a determination that defendant was ten percent comparatively negligent in causing an accident in which plaintiff Paulette Dykstra was seriously injured. Plaintiffs cross-appeal, challenging that portion of the judgment finding Paulette ninety percent comparatively negligent. We reverse, concluding that the Court of Claims erred in finding that faulty road design was a proximate cause of the accident and defendant was therefore liable for ten percent of plaintiffs' injuries.

Plaintiff turned left at a rural highway intersection without seeing an oncoming car and was immediately broadsided. She sued defendant, claiming that the accident was caused by the negligent design of the road, which prevented her from seeing the oncoming car until it was too late to avoid the collision. The Court of Claims found that plaintiffs' damages were $3,300,000. Based on the determination of comparative negligence, it awarded plaintiffs $330,000, plus an additional $19,065.49 in mediation sanctions and $16,118.46 in prejudgment interest, for a total award of $365,183.95.

Defendant argues that the lower court erred in finding that the design of the road contributed to this accident. Specifically, defendant contends that because the court found that Paulette Dykstra failed to see the oncoming car when it was visible, the court erred in finding that the design of the road was a proximate cause of this accident. We agree. The Court of Claims stated in its opinion and order:

> While this Court has determined that there was a problem with the roadway that contributed to this accident, the unmistakable fact is that the primary fault for this tragedy must be attributed to the Plaintiff. The evidence clearly demonstrated that she turned directly into the path of an oncoming car that was being driven prudently and carefully by its operator. Simply put, Plaintiff did not see what was there to be seen.

As the court itself found, the evidence demonstrated that had plaintiff merely looked to ensure that the way was clear, she could have avoided the collision, either by waiting for the oncoming vehicle to pass or by driving past the intersection and turning back.

Liability for negligence does not attach unless the plaintiff establishes that the injury in question was proximately caused by the defendant's negligence. *Babula v Robertson*, 212 Mich App 45, 54; 536 NW2d 834 (1995). Proximate cause means such cause as operates to produce particular consequences without the intervention of any "independent, unforeseen cause, without which the injuries would not have occurred." *Id*. Though there are diverse theories of proximate cause, almost all agree that the defendant's wrongful conduct must be a cause in fact of the plaintiff's injury before there is liability. *Ross v Glaser*, 220 Mich App 183, 199; ___ NW2d ___ (1996). This entails "a matter of fact inquiry into the existence or nonexistence of a causal relation as lay people would view it." *Id.* Although this determination is ordinarily left to the trier of fact, if reasonable minds cannot differ regarding the proximate cause of the plaintiff's injury, the trial court should rule as a matter of law. *Babula, supra* at 54. In the present case, plaintiff's premature turn was an independent, unforeseen cause without which the accident would not have occurred. Although defendant may have been negligent in designing the road, we do not believe that defendant's negligence was a proximate cause of the accident in view of plaintiff's intervening negligence. We find that the Court of Claims clearly erred in determining that the design of the road was a proximate cause of the collision and plaintiffs' injuries, and we reverse the court's judgment for plaintiff. Given this ruling, we need not address plaintiffs' claim on cross-appeal regarding comparative negligence.

Defendant also argues that the court erred in holding that plaintiffs' claim was not barred by plaintiffs' failure to file a notice of their intent to bring suit pursuant to MCL 391.1404; MSA 3.996(104). Specifically, defendant contends that plaintiffs' claim should be barred despite defendant's failure to show that it was actually prejudiced by plaintiffs' failure to file the statutorily required notice . We disagree. Our Supreme Court has recently reaffirmed that a plaintiff's failure to file the notice required by MCL 391.1404; MSA 3.996(104) will not bar recovery absent a showing that the defendant was actually prejudiced thereby. *Brown v Manistee Co Rd Comm*, 452 Mich 354, 366; 550 NW2d 215 (1996). Defendant's argument regarding notice is therefore without merit.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald